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Babies, Bodies and Entitlement: gendered aspects of access to citizenship in the Republic of Ireland

Steve Garner

Abstract

Since the mid-1990s, automatic citizenship for children born in the Republic has been a source of growing debate against a backdrop of increasing immigration and the peace process. In June 2004, the debate culminated in a referendum opening the way to a constitutional amendment that attaches residence qualifications to the hitherto unfettered entitlement to citizenship available through *ius soli*. Arguments for the amendment were couched in terms of a threat posed by Third World women having babies in Ireland to obtain residence, and a putative obligation to the EU to harmonise citizenship laws. This paper explores how pregnant foreign women's bodies became a site of perplexity about the borders of the 21st century Irish nation. It is therefore suggested that neither the 'racial state' theories nor feminist theories of the nation-state account fully for this. On closer inspection, the seemingly *sui generis* case of the Irish referendum is therefore fruitful in that it demands further reflection in terms of bridging gaps in the existing theory.

Background: the Republic of Ireland

It is no accident that anxieties over the political and legal borders distinguishing citizens from non-citizens have arisen on the island of Ireland in the contemporary period. The timeline of legislative and judicial interventions covered here stretches from 1989 to 2004, including the period of Ireland's transition into a country of immigration, its economic boom, the IRA ceasefire and the ensuing peace process that opened cross-

border institutions. (1) The realisation that other people's diasporas were taking root in Irish soil has pushed particular groups and politicians to focus on this as a negative development, a new alien influx with echoes of the English/Scots plantations of the 16th century.

At the same time, the number of asylum applications was rising rapidly, from an annual rate of less than a hundred in the early 90s to almost 12,000 in 2002, before falling to 4,666 in 2004. At the 2002 Census, 5.5% of Republic of Ireland residents were non-nationals, and the population of 3.92 million had reached its highest level since 1891, when it was recovering from the aftermath of the 'Famine'.

Defining nationality: residence vs. bloodlines

Prior to the 2004 Citizenship Act (passed as a result of the referendum I analyse here), children born in Ireland acquired Irish nationality through *ius soli*. In December 1989, the Supreme Court's 'Fajujonu' Ruling had established a precedent for non-nationals to obtain the right of residence through having children born in Ireland. The Supreme Court judges agreed that children are entitled to the 'company and protection' of their family (as set out in Articles 41 and 42 of 1937 Constitution). This of course occurred at a time when Ireland was still a country of emigration. By 1998 however, the number of immigrants had begun to outnumber that of emigrants.

The Good Friday/Belfast Agreement, signed that year, led to a series of constitutional adjustments, both North and South of the border. As a quid pro quo for the Irish government formally relinquishing designs on the whole territory of Ireland (2), the nationalists obtained a geographical extension of the compass of Irish nationality, as anyone born in Ireland is offered 'membership of the nation'. The subsequent Citizenship Act, 2001 thus granted Irish nationality directly to nationalists in the North,

who had hitherto only been able to claim nationality through a grandparent born before 1922.

Much discussion on the question of immigration and related issues took place in the 1997-2003 period⁽³⁾. Most important for the argument pursued here involves the accession to the office of Minister for Justice, Equality and Law reform by Michael McDowell after the 2002 general election. McDowell had served as Attorney General in the centre-right Fianna Fáil-Progressive Democrat coalition government that had assumed power in 1997. McDowell had referred to asylum and immigration as serious problems in radio interviews prior to the election, and immediately began attempting to establish his authority in July 2002 by implementing 'Operation Hyphen', entailing a series of raids on people thought to be non-nationals who had overstayed their visas and/or exhausted appeals against deportation.

He next challenged the 'Fajujonu ruling' in two cases heard in the Supreme Court in January 2003. Three asylum-seekers (A Nigerian national and a Czech couple) who had children born in Ireland, had challenged their deportation on the grounds of Fajujonu. By a 5-2 decision, the Supreme Court ruled in favour of the Minister: the Fajujonu precedent had thus been nullified. At the time of the court's decision, around 10,000 people had successfully lodged claims on the basis of having what the Department refers to as 'Irish-born children', or IBCs, and a further 7,000-10,000 had claims in the system. The 'IBC route' was pursued by many obliged to wait years to have their claim processed, and people were even advised unofficially to do so by some Department officials during the 1998-2002 period.

However, the outcome of the 2003 Supreme Court decision was that all claims to remain in Ireland due to 'IBC' now had to be dealt with on a case-by-case basis. The Minister was not satisfied with this, and in March 2004 he announced that a referendum would be held on the issue of amending the 2001 Citizenship Act. McDowell proposed the

introduction of a 3-year residence qualification for non-national parents before their child was entitled to citizenship. The stakes of this change and the arguments used to justify it are analysed in the next section. The referendum was held on June 11, 2004, when the Minister's amendment received an 80% backing of the voters on a 62% turnout, and was enshrined in the Citizenship Act 2004 (which came into force on January 1, 2005). The right to Irish nationality is no longer automatic for *some* children born in the Republic.

The Stakes of the Referendum

The brief narratives contained in the preceding paragraphs necessarily elide and compress complex relationships of entitlements and visions of community. However what emerges most strongly is the tension between access to the resource of citizenship through birth and that achieved through residence. It should be noted that this tension is itself a product of State interventions: before 2004 the Irish nationality laws, like those of many countries unproblematically combined pathways to nationality involving both (4). The only people directly affected by the new constitutional amendment are those who attempt to claim residence rights through having an IBC – who is distinguishable from an Irish child solely through her/his parents' nationality. Since other EEA nationals enjoy the right to residence and employment in Ireland anyway, applying for residence through this route would only be useful for asylum-seekers and labour migrants from developing world nations. The long-term residence and employment rights acquired give rise to an entitlement to some social welfare benefits and an increased possibility of international mobility. In short, these represent major improvements in life chances for people fleeing repressive regimes and/or dire economic conditions.

The government's justification for holding a referendum (necessary for any constitutional amendment) was fourfold.

- i) Increasing pressure had been placed on the Irish maternity system by an 'influx' of non-national women attempting to take advantage of *ius soli*. In March 2004, when announcing the referendum, the Minister gave a figure of 60,000 births to non-national women in the previous year.
- ii) People with no social, cultural or historical link to Ireland should not benefit from citizenship, a situation which the current arrangement allowed to happen.
- iii) The European Union required harmonisation on citizenship laws, and Ireland's were seen as anomalous in that they granted *ius soli*, which even France no longer did.
- iv) The IBC 'loophole' was threatening the integrity of Ireland's immigration system by enabling people to apply for asylum and then not have to follow through the application in order to gain residence.

Critique of the Government's Referendum Justifications

- i) Minister McDowell's figure of 60,000 births included those to women who were *legally* in the country, and not just births to asylum-seekers. This sleight of hand was combined with an assertion that the Masters (hospital managers) of Dublin maternity hospitals had complained that the number of foreign women arriving in the late stages of pregnancy (with no supporting medical records) was threatening their health and placing undue strain on the Irish maternity system. In the event, the Masters distanced themselves from this statement. In February 2004, Dr Michael Geary (Master of the Rotunda Hospital) wrote to the Minister for Health asking for 'urgent attention to be given to the problem of non-national women with HIV seeking care' (5). Yet a meeting between the Masters and the Ministry of Justice in March 2004, Geary also claimed the Minister's statement that Masters had 'pleaded' with him to act on the issue of late arrivals was 'an exaggeration', while Sean Daly, Master of the Coombe Hospital wondered whether

Masters were being made 'scapegoats' in the affair (6). However, pregnancy-related issues were not confined to labour.

Indeed, the overall increase in births to non-nationals occurred against the backdrop of a rising Irish population and a decline in the number of maternity beds in Dublin (7). Although the argument about foreign women was clearly unsubstantiated by any statistics, it was repeatedly referred to by supporters of the 'Yes' vote throughout the 90-day campaign. The issue of the actual seriousness of the 'citizenship tourist' problem in terms of numbers was the source of a heated debate in the Dáil (lower house), and revolved around dialogue between Masters of Dublin Hospitals and the Department of Justice.

Additionally, the government's attitude to foreign women and the health service appears inconsistent. Launching a report on the health service that was part of a government anti-racism programme, Minister for Health Micheál Martin had recognised 'the enormous value that overseas recruitment brings over a wide range of services' (8). The report itself stated that there was a need to 'dispel misconceptions about the impact of people from minority ethnic backgrounds on healthcare resources' (9). McDowell's own ministry ran this anti-racism campaign, but his comments ran counter to the report's recommendations. The assumption underlying the call for amendments appears to be that foreign women make the difference between viable and overburdened services: the incentive for such births should thus be withdrawn.

ii) More interestingly, the formula in which exclusion from authentic citizenship was expressed involved reference to 'social and cultural links'. Pro-'Yes' vote Senator John Minihan's definition, given a fortnight prior to the referendum, provides a synthesis:

'People with no social, historic or cultural links to Ireland should not be able to freely confer Irish citizenship on their children. Those children currently born in

Ireland will, in turn, be able to confer Irish citizenship on their own children and grandchildren even if they never reside in Ireland' (10).

Since the impact of the amendment would fall not solely on people who arrived in the late stages of pregnancy, those covered would include asylum-seekers who had been in the country for years (their time did not count toward the 3-year residence qualification), and labour migrants from non-EEA countries. How the social and cultural links could be tested, or what criteria defined them was not made explicit. However, as the amendment to the 2001 Citizenship Act put forward in the referendum did not seek to remove the existing qualification for Irish nationality solely through an Irish grandparent, we can assume that this latter criterion is a key one. The links Senator Minihan is talking about thus emerge as being primarily, if not exclusively, to do with bloodlines.

iii) While moving *de facto* toward common policies on both immigration and asylum (11), the European Union has certainly not issued any directive on the harmonisation of member-states' citizenship laws. Moreover, as the advocates of the 'No' vote pointed out, the *ius soli* model is at the heart of the citizenship laws of around 40 republics, making Ireland's choice of favouring *ius sanguinis* no more or less rational in terms of harmonisation than retaining the pre-existing combination outlined in the Citizenship Act, 2001.

The *a priori* granting of residence to non-nationals with 'Irish-born children' raises a number of issues, the first of which is the new construction of a distinction between 'Irish' and 'Irish-born' children, in a constitutional context where no such distinction is made. Since the basis for this administrative distinction, made within the Department of Justice in the late 1990s, is through bloodlines alone (children without an Irish national parent are referred to as 'IBC'), this amounts to the racialisation of one group of Irish citizens. Secondly, the 'IBC route' to residence for *parents* (never a direct route to citizenship, although this connection was routinely asserted in the media throughout the

1998-2003 period) is posited as a 'loophole' to be closed off. The assumption here is that of the 'no-social-and-cultural-links' line outlined above, in that entitlement to Irish nationality through one grandparent is maintained unquestioned. So in practice, after the 2004 Act, people whose bloodlines run back to Ireland via Melbourne, Boston or Newfoundland for example are privileged vis-à-vis Irish children whose forebears come from Bucharest, Lagos or Manila.

Moreover, asylum-seekers with 'IBCs' were frequently told by civil servants and asylum advisors, that the 'IBC route' to residence might be more fruitful. The long wait for an interview, the low rate of refugee status obtained, and the catalogue of difficulties experienced by asylum-seekers in obtaining a fair hearing, of which some are gendered, are deterrents to remaining in the asylum-seeking queue when an alternative is proposed. Moreover, it is frequently argued that asylum is more difficult to obtain for women for example as they are primarily viewed as dependent on male relatives, and rape is not even seen as specific persecution in the terms of the Geneva Convention (12).

iv) According to the Minister, the major threat to the integrity of Ireland's immigration system is embodied in the European Court of Justice's (ECJ) 'Chen' decision, a ruling disseminated as an exemplar of the phenomenon labelled 'citizenship tourism' by the 'Yes' vote lobby. Man Levette Chen, a Chinese national resident in the UK with her husband and one child, had been refused long-term residence rights. She could not return to China when she became pregnant with her second child because of the 'one child' rule. On her lawyer's advice, she travelled to Belfast to give birth so that her 'IBC', Catherine, would benefit from an EU nationality, which should guarantee her mother residence rights in the UK: provided she would have no recourse to public funds, a crucial criterion for the ECJ. In May 2004, the ECJ Advocate-General ruled in Chen's favour, overturning the British Supreme Court's decision to deport her, a decision later ratified by the ECJ in October (13). Despite the facts that Chen made no claim either on

Irish or UK state resources, never set foot in the Irish Republic, and that her daughter was born in a British NHS hospital, her case was held up by Minister McDowell as the thin end of the wedge, indicative of the alleged overburdening of Irish maternity services. 'Irish citizenship law', argued the Minister, was 'being used in an attempt to circumvent UK immigration control through the exercise of EU free movement rights' (14).

Indeed, pregnant minority women and mothers of small children were spat at and verbally abused in the years prior to the referendum because of the link made in popular discourse between having Irish children and the entitlement to benefits (15). This can in part be attributed to the frequent erroneous assertion that having an IBC bestowed citizenship (rather than residence): a fiction that appeared in media of all kinds from around 1998 onwards (16).

In the absence of specific studies into voting rationales, there can be only speculation into the intentions of the referendum voters. Given the attitudinal shifts noted in the 1997-2003 period, the increase in racist incidents reported to the National Consultative Committee on Racism and Interculturalism, and the mounting number of cases brought against service-providers and employers under the equality legislation, it would actually have been more surprising if the vote had been less convincing (17). It is also unclear to what extent the referendum was seen as a technical matter or a means of sending a signal that people felt levels of asylum and immigration were too high. Indeed, the state broadcaster, RTE, conducted an exit poll on the day of the referendum in June 2004 that showed more than 60% of the 3,000 voters polled had cast their vote for reasons of hostility toward migrants in general.

From the attitudinal surveys published in the period up until 2002, three clear trends emerge. Firstly, there was a widespread increase in hostility towards immigrants revealed in all polls. In the EU's 'Eurobarometer 2000', the Irish figure for those feeling that 'the presence of minorities' was 'a source of insecurities' was by far the highest in the EU15

and had grown the most since 1997. Secondly, the focus of hostility moves towards groups identified as being asylum-seekers and immigrants (Black people and Roma in particular, followed by Irish Travellers). Thirdly, the reason for hostility is given as threats to dwindling Irish resources. These are not surprising findings, but they do occur in the midst of the largest economic boom that Ireland has witnessed (and the largest in Europe in the 1990s and early 2000s). Moreover the small polls on minorities demonstrated experiences of endemic violence and abuse, extending beyond non-national to self-identifying Black Irish people, who reported the highest levels of violence (18).

With attitudes and practices becoming increasingly hostile to Ireland's Others, we can observe that the ideological preparation of stressing immigration as a threat, and asylum-seekers as administrative burden undertaken by the Irish government in the 1997-2004 period was neither propitious for nor conducive to sensible reflection on constitutional change in the area of citizenship.

Underlying all the justifications for changing the Citizenship Act is the assumption that entitlement to Irishness is primarily an essence that can be transmitted genetically: any normative claim to become part of the Irish republican *demos* rather than the national *ethnos* is subject to residence qualification. It is worth stressing for clarification that we are not talking about the normative residence qualification for naturalisation (which remains 5 years' residence out of the previous 9), but in order for *children* to acquire a birthright. In effect, the access to a child's birthright is now contingent upon his/her parent's status. Particular claims on Irishness can thus be officially 'bogus', delivered, as it were, from non-national wombs. Pregnant foreign women, where foreign can be understood as non-EEA (and most frequently West African, North African and Eastern European), emerge as jeopardising the quality of care given to authentic national mothers, by absorbing resources better spent elsewhere. Their children are cuckoos in the Irish nest: a state of

affairs that those who had framed the Good Friday Agreement's clause dealing with citizenship had never envisaged (19).

Emerging from this are ideas of rights attaching to children and parents through residence and bloodlines. How can we attempt to make sense of the unusual developments outlined above, using ideas already developed using gendered approaches?

The gendered reproduction of the nation as an interpretive framework

It is now almost a cliché to state that women 'reproduce' the nation, just as in Marxist terms they 'reproduce' the labour force. Women represent the means of engendering nationals. A growing literature has argued that women are both constituted differentially by the State, and experience citizenship differently from men. Women can thus be targeted in the tactics of organised rape in order to violate the opposing nation in war situations. There are studies of states' natalist policies, and plenty on the gendered dimensions of migration and asylum-seeking (20).

The discourse and policy outcomes in the Irish debate over citizenship, even as captured in the highly summarised way presented in this paper, clearly touch on most aspects of the work referred to. Some of the arguments developed in feminist literatures (below) can explain this.

The importance of abortion discourse

The issue of abortion is identified as a key tool in analysing of the Irish case in terms of framing rights in the mother/child/foetus triptych (21): rights which are the subject of contestation in the Citizenship Referendum discourse. The Irish nation is constituted through appeals for rights bestowed on citizens *both present and future*: opponents of abortion maintain that it breaches the rights of Irish citizens as unborn yet living children. Thus, Miss X, in the 1992 'X' Case, was originally barred from travelling to the

UK for an abortion because it would annul the right of a future Irish citizen. The debates surrounding the 'X' case, plus the two referenda on abortion in Ireland (in 1994 and 2003) indicate the position of mothers within the nationalist imagined nation in relation to the Constitution and membership of the EU.

Writing on the abortion issue is heavily suggestive of complexity in terms of who is entitled to what. This is explained as the fruit of a set of long-term changes; specifically the usurpation of the Catholic Church from its privileged position in drafting social policy, which enabled the discourse on abortion to assume a more complex character. Now, the rights of child and mother are more sensitively balanced than in previous decades, during which the child's had predominated (22). Indeed for Lisa Smyth, the vernacular narrative of Irish abortion discourse reveals the hegemonic patriarchal, conservative catholic construction of the Irish nation since independence. She argues that in the abortion discourse, the rights-bearing citizen was historically constructed as an individual. Hence in pro-life arguments, the foetus is the owner of property in 'his' person to which nobody else has a right, not even the pregnant woman upon whom 'he' is entirely dependent for survival (23). Yet in the referendum's 'Yes' campaign the basis of this argument is reversed: a future citizen's rights are annulled by dint of the parents'. Indeed, in the constitutional amendment ensuing from the referendum, the child of non-national, non-residentially qualified parents (the ex-future national?) becomes indivisible from his/her mother's body.

Moreover, interpretations of the law in this field are inconsistently applied in the courts. In January 2002, a pregnant Nigerian woman asylum-seeker appealed against deportation on the grounds that this would constitute a breach of a future Irish citizen's rights. In that case, the Supreme Court held that the rights of the Minister superseded both those of the woman (non-national) and child (future national). So what emerges from the writing on abortion referred to is the dominant construction of Irish nation as an ethnos

whose internal order is enforced by the differential application of legal logic to the same situations. Non-national mothers are, de facto, bearers neither of the same rights as 'natural' Irish mothers, nor of *muintir na h'Eireann* (the Irish people). Moreover, the debate is not framed as a 'rights discourse' at all in Ireland, contends Smyth, but instead 'in terms of the values and interests of the 'pro-life' familial nation' (24). The non-national woman's body therefore becomes the determining political factor in the classification of the child's. From this perspective, in order to be Irish, you have to be Irish to begin with. The biological process of reproducing the nation over-determines the social in some cases (non-EU nationals). It is surely not a coincidence that Justin Barrett, the organiser of Youth Defence (a high-profile pro-life direct action group), ran a campaign against the Treaty of Nice in 2001 in which the dangers to Ireland of immigration were highlighted (25).

In 2003-04, the Courts and the electorate deemed the Minister's rights to control the movement of aliens (under legislation passed in 1935 and 1946) as more important than the rights of Irish children of non-national parents. Indeed, the two dissenting Supreme Court judges in January 2003 both argued that the Minister's case was actually about the rights of the parents rather than those of the children, which were guaranteed under articles 41 and 42. The constitutional reasoning here corresponds to the principle of 'patriality' (descent through bloodlines) introduced into UK law in the 1968 Commonwealth Immigration Act and the 1971 Immigration and Nationality Act, which overrode membership of the British nation through membership of a colonial possession of Britain.

Somewhere in this story then is a focus on reproductive rights, and their differential application depending on the status of the women involved. At the far end of the spectrum in which the State places emphasis on guarding the gene pool, we might also point to the Nazi policy on Eastern Europe, where sexual relationships between

Germans and occupied 'races' was highly policed. German women found to be fraternising with lesser groups were immediately sent home, while if a German man got a woman pregnant, she would be subject to scrutiny in terms of whether or not she was a member of a more, or 'less valuable 'race'' (26). From this perspective a constitutive characteristic of the 'IBC' (already officially classified by the State as not fully racially belonging) is membership of a 'less valuable 'race'', albeit expressed in euphemisms about history and culture, and glossed with administrative necessity.

To return to the starting point of the 'Yes' campaign, the issue of maternity crystallises the gendered nature of the State, if we use Omi and Winant's definition of the State (*Racial Formations*, Routledge, 1994, p.82) as including policies and justifications, and social relationships around policies. If Irish maternity services were under pressure, it was due to cutbacks in services. The indigenous birth-rate was starting to rise again, as evidenced in the 2002 Census, while the hospital system is maintained by a supply of foreign workers, the majority of whom are women, drawn from such places as the Philippines and South Africa. In all, over 13,000 work permits were issued to the 'Medical and Nursing' sector, in the Department of Enterprise, Trade and Employment's breakdown, between 1999 and 2004, constituting 7.5% of all permits over that period (27). Prior to January 1st 2005, women-of-less-valuable-races in Ireland thus occupied two principal positions; one acceptable (replacement workforce), and one unacceptable (mothers of new nationals).

So we might also use Yuval-Davis' identification of the 'eugenicist' and 'malthusian' arguments to develop this insight (28). Malthusians fear over-population and stretched resources, as evidenced in the stress on maternity services, and 'thin end of the wedge' arguments about 'citizenship tourism'. Additionally, by introducing the 3-year residence condition, 'bad' genes are to be provisionally kept out of the national gene pool. The State's biopolitical function, in Foucault's terms, is to keep alive the valuable members of

the population, here defined by access to citizenship. The 'we' of the Irish State thus staves off the threat to its resources (and capacity to defend its membership), by re-legislating 'them' away from access.

Both these analyses, like much of the writing on feminism and the State, for example, is meticulous in its deconstruction of the ways in which the State genders its population and its citizens (29). While there may be differences in understanding and application of gender relations: a priori patriarchal for MacKinnon and Pateman, more contingent and less categorical for the two latter, there is one unifying assumption. The gendered subjects it is dealing with are already nationals. In the Irish case referred to here, the whole objective of the struggle is to gain a status similar to that of a national, in terms of entitlements to the good life. In arguing that part of the process of earning male citizenship in the 1981 British Nationality Act was accomplished by excluding women, Yuval-Davis hints at transnational issues in this precise respect. British women obtained the right to pass on citizenship, and non-national women in Britain lost their right to have British children (30). So whilst Yuval-Davis and MacKinnon for instance, are useful in focussing on the workings and rationales of power, the grand arguments these accomplished authors make in the work cited is limited in this area: i.e. they stop at the border, so to speak.

Indeed, that the nation-state is the unit of reflection and identification emerges as the norm: it is even constitutive of the extant theorising of women and the State. The women responding in Halkias' study of reactions to the issue of the low birthrate (the *demografiko*) in 1990s Athens, exemplify this point. She shows that: 'The need to have at least one child in order to be considered a good Greek woman, which is implicitly underscored in the official public sphere's articulations of the *demografiko*, is never challenged by the women interviewed'. Moreover, Halkias argues intriguingly (and referencing Foucault) that this effect can be seen as circular: nations 'are not always the

inert or dictating 'source' of power, but also always a product of its operation, even when spoken 'against', at the same moment, by its subjects' (31).

Moreover, the ideological weight of the nation-state as a territorial underpinning for the production of rights in a democracy proves insuperable to even the most rigorous questioners of borders and their validity. Even critics of existing inequalities in terms of citizenship and entitlements, may conclude, like Seyla Benhabib, that:

'Precisely because democracies enact laws that are supposed to bind those who legitimately authorize them, the scope of democratic legitimacy cannot extend beyond the demos which has circumscribed itself as a people upon a given territory (...) I see no way to cut this Gordian knot linking territoriality, representation and democratic voice' (32).

We can therefore patch together an understanding of the stakes underlying the Irish citizenship referendum using a range of arguments made about gender, yet this perspective is inadequate to encompass some of the other dimensions.

The role of the State in racialising its population has ramifications broader than gender alone. It emerges from critical race theory as an institution that racialises its population and is engaged in redefining the meanings attributed to 'race' in its constant interplay with civil society actors (33). The Irish State's actions vis-à-vis citizenship constituted a devaluation of children's rights in order to weaken those of parents, by shifting the borders of citizenship toward a policy of bloodline-derived exclusivity. Consequently, the Irish nation, like the German nation in the Constitutional Court's 1990 ruling, is now primarily conceived of as: 'a political community of fate', i.e. an *ethnos* rather than a *demos* (34). The referendum manoeuvre effectively embodied the transition, as Lentin notes, using Goldberg's terms, from 'racial' to 'racist' State (35).

Even if the majority of those affected were women, the problem requires situating in an analysis of the State that space does not permit here. In terms of the erection of further

barriers to bolster ineffective ones, the Irish State managed to restore a degree of racial purity, encapsulated in the cryptic discourse about ‘social, historical and cultural links to Ireland’. Now, echoing the French far right’s declaration from the 1980s, Irish citizenship has to be earned – but only by some, and they are identified by an absence of Irish blood lines: ‘*la nationalité irlandaise ça se mérite !*’ (36)

As has been argued elsewhere (37), in a period where sovereignty is shrinking, the State acts upon asylum-seekers to establish and reaffirm its means of governance and its power to control borders. Lubhéid (2004: 344-45) summarises this:

‘while childbearing by asylum seeker women is represented as a threat to the sovereignty of the nation-state, in fact, their presence has allowed the state to refashion the national imaginary, reinvent itself, and implement new strategies of sexualized racialized governance’ (38).

As this article has attempted to demonstrate, some feminist perspectives can illuminate various aspects of the Irish State’s policy on citizenship in the 2003-04 period, yet there are also lacunae. The ‘racial state’ approach can certainly fill in some of the gaps in the theory referred to here, particularly in terms of the subtleties of exclusion at the heart of the modern nation-state (39). In particular, the nascent relationship between national and supra-national levels of authority clearly at play in the Irish case has so far almost evaded the radar. Given the flurry of activity around immigration and asylum at European Union level over the last decade, e.g. Tampere I, Tampere II, the outsourcing of asylum-seeker processing to third countries, there is clearly a need for more theoretically informed and empirical work to enable us to understand the nation-state’s role vis-à-vis that of the supra-national state, in the racialisation of contemporary European populations and especially its gendered inflection.

Conclusions

This paper has argued that the case of the Irish referendum on citizenship mobilised a number of discourses whose overlap has not previously been the centre of theoretical research, even among feminist theorists of the State, who have paid a good deal of attention to relationships between national women and the nation-State. The Irish state's legislative power was channelled into excluding particular bodies from membership of the nation: most interestingly via the racialised bodies of their parents (particularly those of their mothers). Racist action here assumes the form of restricting the movement of bodies both in physical space, and in the national imaginary. The symbolic references around the issue tied the defence of Irish citizenship to essentialised cultural resources within Ireland, and obligations constructed through membership of the European Union to combat what might be seen as hyper-mobile labour's exercise of consumer choice of nationality in a fast-narrowing marketplace. This gender-mediated discourse constructs the children of non-national women as queue-jumping competitors for resources, while the latter see their actions as attempting to lay the basis for stable and durable 'good lives' in the relatively wealthy North. These women (particularly asylum-seekers) thus find themselves caught in the movement from the status of bare life to that of homo sacer, in Agamben's formulation (40). It may well be that a number of motivations, emotional and economically rational strategies inform the choices of women in this category, but qualitative research would be required to discover and analyse this (41).

The Irish vernacular elements to this discourse are twofold. Firstly, there is the ideological context of increasingly hostile attitudes toward racialised others viewed as bringing disorder, impurity and threatening dwindling resources. Secondly, there is the fallout from the abortion debates of the previous decade, in which the unborn child is posited as *future* citizen and bearer of rights. The transposition of this idea to the citizenship referendum demonstrates a reversal of the implicit hierarchy of rights. In the abortion debate, the unborn (national) child's rights trump those of the mother, while in

the citizenship debates, children are racially split by the State into Irish and 'Irish-born', and their mother's nationality determines the child's access to resources.

Notes

1 Migration into Ireland has increased spectacularly since the early 1990s. It became a net importer of people in 1996, and a peak of over 47,000 work permits were issued to non-EEU nationals in 2003. Much of the incoming cohort was accounted for by returning emigrants, who until 2002, comprised at least half. Economic growth consistently outstripped the EU average since 1994, although it has slowed since 2002, the major areas of expansion being pharmaceuticals, manufacturing and computers.

2 This is mentioned because the judges in the 2003 Supreme Court ruling make explicit reference to the changed context impacting on their decision to back the Justice Minister's move to deport non-national asylum-seekers with children born in Ireland.

3 R. Lentin, and R. McVeigh, (eds.) *Racism and Anti-Racism in Ireland* Belfast: Beyond the Pale, 2002; B. Fanning, *Racism and Social Change the Republic of Ireland* Manchester University Press, 2002; S. Garner, *Racism in the Irish Experience*, Pluto, 2003.

4 The Act's routes to citizenship were; birth on the island of Ireland, post-nuptial naturalisation, naturalisation through residence, birth abroad to one Irish parent, and descent through at least one grandparent born in Ireland.

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7 P. Kennedy, and J. Murphy-Lawless, 'The Maternity Care Needs of Refugee and Asylum Seeking Women in Ireland', *Feminist Review* 73, 2003.

8 N. Snuggs, 'Martin promotes medical cultural diversity report', *Irish Times*, 25 March 2002.

9 National Consultative Committee on Racism and Interculturalism / Irish Health Service Management Institute, *Cultural Diversity in the Healthcare Sector: Towards the Development of Policy and Practice Guidelines for Organisations in the Health Service*, NCCRI / IHSMI, 2002, pp. 12-14.

10 Speech at the Smurfit Business School's 'Debate on the Citizenship Referendum', 31 May 2004.

11 Refugee Council, *Refugee Council briefing on the common European asylum system* Refugee Council, March 2004.

12 See for a good summary of such arguments, C.Muller-Hoff, 'Representations of Refugee Women: legal discourse in Europe' *Law Social Justice and Global Development*, 2001 (<http://elj.warwick.ac.uk/global/issue/2001-1/mullerhoff1.html>)

13 European Court of Justice. *Chen judgement* (Case C-200/02: <http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>) October, 2004.

14 Speech by the Minister for Justice, Equality and Law Reform, Michael McDowell, on Private Members Motion in Seanad Éireann on 7 March 2004. The theme was repeated for example, in his speech at the launch of the Progressive Democrats' referendum campaign, on 25 May 2004, and in his *Irish Times* article, 'Yes', on 13 June 2004.

15 R.Lentin, 'Pregnant silence: (en)gendering Ireland's asylum space' *Patterns of Prejudice*, September 2003; Kennedy and Murphy-Lawless, 'The Maternity Care Needs of Refugee and Asylum Seeking Women in Ireland', 2003.

16 An example worth looking at is a 1998 article in the *Sunday Tribune*, which epitomises the amalgamation of trafficking, citizenship and welfare abuse (Garner, 2003, p.178). Eithne Lubhéid ('Childbearing against the state? Asylum seeker women in the Irish

republic' *Women's Studies International Forum*, 2004) links a number of popular sources of discourse to show how this connection gathered momentum around the referendum.

17 Summary of attitudinal surveys in Garner, 2003, pp. XX; National Consultative Committee on Racism and Interculturalism, *Incidents relating to racism reported to the NCCRI* Dublin: NCCRI (6-monthly reports downloadable from <http://www.nccri.ie/incidents-reports.html>): The Equality Authority's *Annual Report* is downloadable from: [\[http://www.equality.ie/\]](http://www.equality.ie/).

18 European Monitoring Centre on Racism and Xenophobia *Attitudes towards minority groups in the European Union: a special analysis of the Eurobarometer 2000 survey*, EUMC, 2001; Amnesty International Ireland, *Racism in Ireland: the Views of Black and Ethnic Minorities*, 2001.

19 A phrase much used by the 'Yes' campaign. Yet none of the Northern Ireland parties – which had negotiated the Good Friday-Belfast Agreement referred to - endorsed the referendum, with the SDLP and more forcefully Sinn Féin, which has six deputies in the Republic's Dáil (parliament), condemning it as 'racist'. Cf. 'Sinn Féin will campaign against citizenship referendum', *Republican News*, 18 April 2004; Mitchel McLaughlin's speech at the press conference launching Sinn Féin's 'No' campaign, 21 May 2004; 'Citizenship Referendum will enshrine inequality within the Constitution - Mary Lou McDonald' *Republican News*, 31 May 2004, *inter alia*.

20 See F.Anthias and N.Yuval-Davis, *Racialized Boundaries: Race, Nation, Gender, Colour and Class and the Anti-racist Struggle*, Routledge, 1992; D. Zarkov, 'Gender, Orientalism and the history of ethnic hatred in the Former Yugoslavia', in H. Lutz, A. Phoenix, A. and N, Yuval-Davis (eds.) *Crossfires: Nationalism, Racism and Gender in Europe*, Pluto, 1995; E.Camiscioli, 'Producing Citizens, Reproducing the 'French Race': Immigration, Demography and Pronatalism in Early Twentieth-Century France', *Gender & History* November 2001; E. Kofman, A. Phizacklea, P. Raghuram, and R. Sales, *Gender and*

International Migration in Europe: Employment, Welfare and Politics, Routledge, 2000; J. Andall, (ed.) *Gender and Ethnicity in Contemporary Europe*, Berg, 2003; *Feminist Review* 2003 (special issue on asylum and exile).

21 R. Lentin, 'Pregnant Silence'.

22 A. Smyth (ed.), *The Abortion Papers*, Attic Press, 1992; L. Oaks, 'Irishness, Eurocitizens and reproductive rights', in H. Ragoné, and S. Franklin, *Reproducing Reproduction: kinship, power, and technological innovation*, University of Pennsylvania Press, 1998; B. Gilheany, 'The State and the Discursive Construction of Abortion', in V. Randall, and G. Waylen (eds.), *Gender, Politics and the State*, Routledge, 1998.

23 L. Smyth, *Abortion and nation: the politics of reproduction in contemporary Ireland*, Ashgate, 2005.

24 Smyth, *Abortion and nation*, p.145.

25 Barrett also authored *The National Way Forward*, The Guild Press, 2003, and has documented links with far right Forza Nuova and the 'Third Position' international fascist movement.

26 For the American eugenics variant see A. Davis, *Women, Race and Class*, Women's Press, 2000; For the Nazis see R. Mühlhäuser, 'Contingent Regulations: Nazi sexual politics of race in the occupied territories of the soviet union, 1941-1945', in A. Lentin and R. Lentin (eds.), *Race and State*, Cambridge Scholar's Press, 2006, pp.121-36.

27 Statistics are accessible at the Department of Enterprise, Trade and Employment website: <http://www.entemp.ie/labour/workpermits/publications.htm#publications>

28 N.Yuval-Davis, *Gender and Nation*, Routledge, 2000, pp. 24-29.

29 C.MacKinnon, *Toward a Feminist Theory of the State*, Harvard University Press, 1989;

C.Pateman, *The Disorder of Women: democracy, feminism and political theory* Stanford University Press, 1990; V.Randall and G.Waylen, *Gender, Politics and the State*, 1998; R.Lister, *Citizenship: feminist perspectives*, Palgrave, 2003.

30 N. Yuval-Davis, *Gender and Nation*, p. 79.

31 A. Halkias, 'Money, God and Race: The Politics of Reproduction and the Nation in Modern Greece' *European Journal of Women's Studies*, May 2003. Quotes from p.224 and 225.

32 *The Rights of Others: Aliens, Residents and Citizens* Cambridge University Press, 2004, p. 219.

33 M. Omi and H. Winant, *Racial Formation in the USA*, 1994; D. Goldberg *The Racial State* Blackwell, 2000; M. Foucault, *Society Must be Defended: lectures at the Collège de France, 1975-76* (ed. M. Bertani and A. Fortuna) Allen Lane, 2004; A lineage could be traced back to Arendt's *The Origins of Totalitarianism*, Harcourt Brace Jovanovich, 1951.

34 Benhabib, *The Rights of Others*, p. 206.

35 R.Lentin, 'From racial state to racist state: Ireland on the eve of the citizenship referendum', *Variant*, Summer 2004.

36 Translation: 'Irish nationality must be earned!' The French original, 'la nationalité française ça se mérite !' was a slogan used by the Front national in the 1980s.

37 S.Garner and A.Moran, 'Asylum and the Nation-state: putting the 'order' back into 'borders' in Australia and the Republic of Ireland' in Lentin and Lentin (eds.), *Race and State*, 2006, pp.101-20.

38 E.Lubhéid, 'Childbearing against the state?', pp. 244-45.

39 Work that intersects with this topic in the context of the colonial State can be readily identified; G.Steinmetz, 'Precoloniality and Colonial Subjectivity: Ethnographic Discourse and Native Policy in German Overseas Imperialism, 1780s-1914' in D.Davis (ed.) *Political Power and Social Theory* vol. 15, 1998; A-L. Stoler, *Carnal Knowledge and Imperial Power: race and the intimate in colonial rule*, University of California Press, 2002; S.Garner, *Guyana, 1838-1945: ethnicity, class and gender* Ian Randle Press, 2007. Yet while broadly

thematically congruent, this research remains to be brought to bear on the issue of citizenship, the State and migration into the developed economies.

40 G.Agamben, *Homo Sacer: Sovereign Power and Bare Life* Stanford University Press, 1998.

41 Cf. Caroline Brettell's subtle treatment of Portuguese women migrants in Paris: 'Women are Migrants too: a Portuguese Perspective', in C.Brettell, *Anthropology and Migration: Essays on Transnationalism, Ethnicity and Identity*, Alta Mira Press, 2003.

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